stove, where it was found, by accident and was technically lost or was hidden there. * * * In either case the finder holds for the benefit of the owner." This is believed to be the correct position. For the purposes of a civil suit, when the right to possession only is in question, an article should be considered lost when the original holder has casually or involuntarily parted with actual or constructive possession whether he leaves the article or drops it unawares. It should make no difference in *McAvoy* v. *Medina*, supra, whether the pocketbook had been found on the table or on the floor, as the barber had no rights unless he could be considered as the bailee of the owner. This is not ordinarily the case. Although a shopkeeper may be held liable as a bailee for those articles which a customer commonly carries with him and must lay aside in making or examining his purchases, 7 COLUMBIA LAW REVIEW 209; *Woodruff* v. *Painter* (1892) 150 Pa. 91; *Rea* v. *Simmons* (1886) 141 Mass. 561, the relation is not a usual one and, in the general absence of acceptance of custody, does not extend beyond such cases. *Bohannon* v. *Springfield* (1846) 7 Ala. 789; *Cory* v. *Little* (1833) 6 N. H. 213.

LIMITATION OF ACTION FOR PERMANENT NUISANCE.—A nuisance receives, and always has received, a different treatment from that given to ordinary trespasses, because of its characteristic of continuing to injure. "It belongs to the idea of nuisance that it is abatable. In the original actions, *assize* of *nuisance* and *quod permittat prosternere*, the judgment thereon, besides damages for the temporary loss sustained, was for an abatement of the nuisance. These actions finally went into disuse, and the action on the case became the remedy, and a party injured by a private nuisance might bring his action *toties quoties*, until the obstinacy of the party maintaining such nuisance should be overcome by repeated recoveries against him, and the nuisance be abated." *R.R.* v. *Loeb* (1886) 118 Ill. 203; III Blackstone, Comm., *220; II Pollock & Maitland, History of English Law, 53. These actions have been supplemented in equity by the remedy of injunction to abate a nuisance. Langdell, Equity Jurisdiction, 31. But there are certain nuisances, such as railroad embankments, which, because of public policy founded on convenience, the courts will not abate. And if repeated recoveries will not, for this reason, be made effective by very exemplary damages to induce the defendant to abate the structure, it would seem that, in such cases, there is a failure of the reason for the rule which compels the plaintiff to bring successive suits to recover his damages, and that he might wisely be given an election to recover, in one action, damages for the permanent appropriation of an interest in his property. This very result has been reached by a bit of judicial legislation, disguised by the phrase "permanent nuisance," *Troy* v. *Cheshire* (1851) 23 N. H. 83; *R.R.* v. *Combs* (Ky. 1874) 10 Bush 382; *R.R.* v. *Twine* (1880) 23 Kan. 585; *Ridley* v. *R.R.* (1896) 118 N. C. 996; which allows of the judicial exercise of a power analogous to that of eminent domain. 6 COLUMBIA LAW REVIEW 459; *North Vernon* v. *Voegler* (1885) 103 Ind. 314. The doctrine of "permanent nuisance," considered as the assessing of damages for future injurious acts is, of course, illogical, for neither can future damages be accurately foretold, *Nashville* v. *Comar* (1889) 88 Tenn. 415; nor does

the plaintiff ever have any cause of action for such damages, since the cause of action for nuisance does not arise until damages have accrued. *Darley Main Colliery Co.* v. *Mitchell* (1886) 11 A. C. 127. The awarding of "entire damages," however, is not actually giving damages for future wrongs, but is "equivalent to the acquisition of an easement by condemnation," *Geer* v. *Water Co.* (1900) 127 N. C. 349: the defendant is thereby made to pay for his appropriation and practical conversion of an easement which the policy of the law prevents his being compelled to restore. *R.R.* v. *Andrews* (1882) 26 Kan. 702. Cases where "permanent damages" are recovered for a nuisance on defendant's land are sharply to be distinguished from cases of a single trespass on the plaintiff's land, for which entire damages must be recovered in a single action, even though future damage may result, such as *Railway Co.* v. *Mihlman* (1876) 17 Kan. 224; *Powers* v. *Council Bluffs* (1877) 45 Ia. 652; *Williams* v. *Coal Co.* (1882) 37 Ohio St. 583. "As to anything upon his own land, a party has a right to control and remove it, and if it is so much of an injury to his neighbor's rights as to amount to a nuisance, is under a legal obligation to do so; but as to that upon his neighbor's land, he has no such right, and is under no such duty. Hence the distinction between nuisance and trespass." Per Brewer, J., in *Railway Co.* v. *Mihlman*, supra.

In a recent Virginia case, the defendant had erected a large and expensive hotel plant, including a sewerage system, which drained into a stream flowing through the plaintiff's land. More than five years after the construction of this plant and its use, the plaintiff sued for permanent damages for the nuisance caused by the pollution of the stream by this sewage. The court decided that her cause of action was barred by the five-year tort statute of limitations. *Virginia Hot Springs Co.* v. *McCray* (1907) 56 S. E. 216. Even if we assume that the classification of a hotel plant as a permanent nuisance can be justified, the question remains, Is the tort statute of limitations to be applied to bar an action for damages from a permanent nuisance? Several lines of cases have answered this question in the affirmative. *Stodghill* v. *R.R.* (1880) 53 Ia. 341; *Van Orsdol* v. *R.R.* (1881) 56 Ia. 470; *Baldwin* v. *Gas Co.* (1881) 57 Ia. 51; *Haisch* v. *Ry.* (1887) 71 Ia. 606; *Frankle* v. *Jackson* (1887) 30 Fed. 398; *R.R.* v. *Loeb* (1886) 118 Ill. 203; *R.R.* v. *McAuley* (1887) 121 Ill. 160; *DeGeofroy* v. *Merchants Bridge Co.* (1904) 179 Mo. 698. Since their holding, however, operates in favor of one kind of nuisance to shorten the period of prescription by which an easement is acquired to say five years instead of the usual twenty, the cases deserve examination. They will all be found to depend less on reasoning than authority. And for authority they ultimately rest and rely upon the *Mihlman* and *Powers* cases, supra, which, as pointed out, are cases of trespass, not nuisance, on dicta from cases where the question of the application of the statute of limitations did not arise, or on cases whose holding is squarely contra, such as *R.R.* v. *Esterle* (Ky. 1878) 13 Bush 667. The better view probably is that a nuisance which the plaintiff may choose to call permanent, is none the less continuous in its nature. So that his right to ask for damages, either those actually accrued to date or "entire" damages, is not barred so long as the nuisance exists and the right to continue it has not been acquired by the defendant by either a release by the plaintiff

or by prescription. *R.R.* v. *Esterle*, supra; *Union Trust Co.* v. *Cuppy* (1882) 26 Kan. 754; *Galway* v. *Ry.* (1891) 128 N. Y. 132; *Parker* v. *R.R.* (1896) 119 N. C. 677; *Nichols* v. *R.R.* (1897) 120 N. C. 495; *Beach* v. *R.R.* (1897) 120 N. C. 498; *Lassiter* v. *R.R.* (1900) 126 N. C. 509.

RELIEF UNDER MISTAKES OF LAW.—The recent case of *Norwood* v. *Railroad Co.* (Ala. 1906) 42 So. 683, brings up a question which has been much discussed (see essays of Evans, D'Aquesseau and Vinnius, 2 Evans' Pothier 320–387) and to which no universally accepted answer has been given, 5 COLUMBIA LAW REVIEW 366; Pom. Eq. Jur. §§ 838–851; and see 55 Am. St. R. 494, note, namely, as to the redress which should be given for mistakes of law. The weight of decisions both in England and in this country is undoubtedly committed to the general proposition that no relief will be given, but the older English decisions both in law, *Hewer* v. *Bartholomew* (1597) Cro. Eliz. 614; *Bonnel* v. *Foulke* (1657) 2 Sid. 4; *Ancher* v. *Bank of England* (1781) Doug. 615; *Bize* v. *Dickason* (1786) 1 T. R. 285, and in equity, *Broderick* v. *Broderick* (1713) 1 P. Wms. 239; *Onion* v. *Tyser* (1716) Id. 343; *Pusey* v. *Deshourie* (1734) 3 P. Wms. 316; *Evans* v. *Llewellyn* (1787) 2 Bro. Ch. 150, and not a few of the recent decisions in the United States take an opposite position. *Remington* v. *Higgins* (1880) 54 Cal. 620; *Brock* v. *Weiss* (1882) 44 N. J. L. 241; *Lammont* v. *Bomly* (Md. 1825) 6 H. & J. 500; *Lawrence* v. *Beaubein* (S. C. 1831) 2 Bailey 623. The general proposition is so honeycombed with exceptions, *Cooper* v. *Phibbs* (1867) L. R. 2 H. L. 149, 170; *Morgan* v. *Dod* (1877) 3 Colo. 551; *Boltarff* v. *Lewis* (1903) 121 Ia. 27; *Sparks* v. *Pittman* (1875) 51 Miss. 511; *Bailey* v. *Insurance Co.* (1882) 13 Fed. 250, and evaded by quibbles, *Hunt* v. *Rousmanier* (1823) 8 Wheat. 174, 211, that its usefulness as a rule of law is greatly impaired. It was first suggested in *Lowry* v. *Bourdieu* (1780) Doug. 481, where Buller, J., said, "if the law was mistaken the rule applies *ignorantia juris non excusat.*" That case was decided, however, on the ground that the parties were in *pari delicto;* and it was not until *Bilbie* v. *Lumley* (1802) 2 East 469, that the rule was actually laid down. Plaintiff's counsel in that case, being unable to cite an instance of recovery for money paid under a mistake of law, Lord Ellenborough said that he knew of only one, where there was such an intimation, and that that was a doubtful case, while in *Lowry* v. *Bourdieu* an action for money paid under mistake of law was disallowed. It is evident that his decision was based upon an incorrect interpretation of the earlier authorities.

It seems probable that Chancellor King pointed out the original use of the maxim *ignorantia juris non excusat,* though he may not have correctly stated its application in his day, when he said in *Lansdowne* v. *Lansdowne* (1730) Mos. 364, that it had reference to pleas in excuse of crimes only. See Doct. & Stud., Ch. 44. It it natural that in the development of law the term should be used as a defense in civil actions; and finally be thought to apply universally, and through a careless dictum and an ill considered opinion come to be translated "all persons are bound to know the law." It is believed that such a development was sound so long as the maxim was confined to defenses. For where one